HEALTH, ENVIRONMENT AND AGRICULTURE COMMITTEE

Members present:
Mr AD Harper MP—Chair
Mr SSJ Andrew MP (virtual)
Mr CD Crawford MP
Mr JR Martin MP
Mr TJ Perrett MP
Mr ST O'Connor MP

Staff present:
Ms R Duncan—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE ENVIRONMENTAL PROTECTION (POWERS AND PENALTIES) AND OTHER LEGISLATION AMENDMENT BILL 2024

TRANSCRIPT OF PROCEEDINGS

MONDAY, 4 MARCH 2024

Brisbane

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The committee met at 11.32 am.

CHAIR: Good morning. I declare open this public briefing on the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024. I am Aaron Harper, member for Thuringowa and chair of the committee. I would like to start by respectfully acknowledging the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples whose lands, winds and waters we all now share.

With me today are Mr Tony Perrett, member for Gympie, who is substituting for Rob Molhoek, member for Southport and deputy chair; Mr James Martin, member for Stretton; Mr Craig Crawford, member for Barron River; Mr Sam O'Connor, member for Bonney and deputy chair; and joining us on the phone is Mr Stephen Andrew, member for Mirani. The purpose of today's briefing is to assist the committee with its examination of the Environmental Protection (Powers and Penalties) and Other Legislation Amendment Bill 2024. The bill was introduced to the parliament on 13 February 2024 by the Hon. Leanne Linard, Minister for the Environment and the Great Barrier Reef and Minister for Science and Innovation, and referred to this committee for detailed consideration and report.

This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Witnesses are not required to give evidence under oath but intentionally misleading the committee is a serious offence. The proceedings are being recorded and broadcast live on the parliament's website. I remind committee members that officers are here to provide factual or technical information. Questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House.

ANDERSEN, Ms Claire, Executive Director, Operational Support, Environmental Services and Regulation, Department of Environment, Science and Innovation

KARLE, Ms Louise, Manager, Regional and Regulation Support, Operational Support, Environmental Services and Regulation, Department of Environment, Science and Innovation

POTTS, Mr Stephen, Acting Executive Director, Environmental Policy and Legislation, Environment and Conservation Policy and Legislation Branch, Environment and Heritage Policy and Programs, Department of Environment, Science and Innovation

VERRILLS, Mr Theo, Manager, Environmental Policy and Legislation, Environment and Conservation Policy and Legislation Branch, Environment and Heritage Policy and Programs, Department of Environment, Science and Innovation

WADE, Mr Lawrie, Director, Environmental Policy and Legislation, Environment and Conservation Policy and Legislation Branch, Environment and Heritage Policy and Programs, Department of Environment, Science and Innovation

CHAIR: Welcome. Would you like to start with an opening statement and we will move to questions after that?

Ms Anderson: Thank you for the opportunity to appear before the committee. I am joined by a number of colleagues from the department today to be able to answer any questions that you may have, but we will make a brief opening statement to outline the key features of the bill that is before us today. The bill amends the Environmental Protection Act 1994 to make enhancements to the efficacy and efficiency of powers and penalties in the act and to help ensure that the tools available to prevent and respond to environmental harm are sufficiently contemporary to address current and future challenges.

The bill delivers on the government's May 2023 commitments to support the recommendations of the independent review into the adequacy of the existing powers and penalties led by retired judge Richard Jones and barrister Susan Hedge. The review was initiated in part due to the significant

odour nuisance issues being experienced by some residential communities—particularly in the Ipswich area—however, the enhancements delivered through this bill will have relevance to all of Queensland.

The bill's policy objectives are to support a more proactive approach to environmental risk management and enable more efficient responses to environmental harm by enhancing powers in the Environmental Protection Act. The amendments are not designed to make fundamental policy changes. The intent behind these changes is to ensure that the environment and the health and wellbeing of our local communities is protected through contemporary, effective and efficient environmental regulation. The bill will clarify and refine environmental policy principles that underpin the Environmental Protection Act. Giving greater prominence to the principles will reinforce their explicit consideration and provide clarity and direction to government, industry and communities on the values underpinning the act and the principles under which it should be administered. The amendments seek to foster proactive action to prevent environmental harm. One of the principles to be explicitly stated in the bill is the principle of primacy of prevention—that is, that prevention of harm to the environment is preferred to remedial or mitigation measures.

The Environmental Protection Act has always contained a general environmental duty to take all reasonable and practicable measures to prevent or minimise environmental harm. The bill seeks to promote proactive action by operators to prevent environmental harm through the introduction of an offence for not complying with that general environmental duty. This is consistent with the principle of primacy of prevention and removes the need for an intermediate notice to secure compliance with the duty. Complementing this is the new duty to restore the environment where a person permits or causes environmental harm through a contamination. This also promotes proactive action to restore the environment if harm does occur rather than requiring a compliance notice to direct clean-up action.

The existing duty of a person to notify of environmental harm is also refined to include circumstances where the person ought reasonably to have become aware of the event giving rise to the harm. This supports the early notification of and timely response to environmental harm incidents. The amendments also seek to enhance efficacy and efficiency should government need to respond to environmental harm that has occurred. Environmental harm definitions will be updated so that a matter of environmental nuisance is not precluded from being serious or material environmental harm. This will ensure that the enforcement tools and offences reflect the seriousness of the impacts on communities and, in turn, will improve public confidence in the tools to manage these cases effectively.

Statutory notice powers will be rationalised to combine three existing notice powers into a single notice called an environmental enforcement order. This will allow for a streamlined tool to ensure compliance with authorities, duties and obligations and respond to environmental harm events. The bill will clarify that an environmental authority is not a barrier to issuing an order or notice when responding to an environmental harm incident where the harm is not clearly authorised or conditioned for under an environmental authority. The amendment provides clarity on existing powers and supports a more timely response. This amendment maintains the status quo for most environmental authority holders with impacts limited to those operators causing unacceptable harm. Amendments will also be made to confirm the procedure under which the administering authority is able to initiate and decide amendments to transitional environmental programs. Further amendments are included to improve evidentiary provisions relating to court proceedings by expanding provisions currently limited to criminal proceedings to be available in civil proceedings as well.

Finally, the bill includes some amendments to update provisions for contemporary language, improve interpretation and to clarify the operation of information confidentiality provisions that were introduced in EPOLA last year. Consultation on the proposals that are reflected in the bill commenced in May 2023, with the government publishing the independent review report and its summary response. This was followed by a detailed consultation paper in September 2023 on proposed amendments to be included in the bill. Consultation on the paper was open for eight weeks during which time the Department of Environment, Science and Innovation hosted six stakeholder information sessions. The department received submissions from a number of organisations, including the resources sector, environmental groups, local government and other industry groups. All this feedback was considered in the finalisation of the bill with care taken through the final drafting to clarify the intent and purpose of the amendments. I would like to thank everybody who was involved in that consultation process and contributed to the development of the bill. As I said, I am joined by a number of colleagues today and we are happy to take any questions that the committee may have.

Mr O'CONNOR: Thank you for being here and for that briefing. I want to touch a bit more on recommendation 12 which would allow the minister or the DG to amend an environmental authority, which of course the government supports in principle but it is not being put forward in this bill. I was wondering whether there were any technical reasons it is not being progressed as part of this legislation. Is there anything, from the department's perspective, that has come up when you looked at how that would be implemented which is one of the reasons it is not here?

Ms Anderson: Recommendation 12 in the original independent review suggested quite broad powers for the minister or director-general in terms of being able to amend an environmental authority condition. As the regulator, we understand that there is a lot of sensitivity around that from our licence holders and we do try and strike a balance between providing certainty in the conditions that our licence holders have whilst also making sure that they are contemporary and appropriate and address best practice over time. In Queensland we are a little different to some other jurisdictions where when you get an environmental authority you get it in perpetuity. It does not have an end date associated with it and there are no statutory review points associated with those conditions on that licence. The independent review did suggest some changes to that. As I mentioned, the government has supported that in principle, but what is before the committee at the moment is really just a number of minor clarifications around the existing powers that we have to open up a licence condition.

There are really only two things in the bill that go towards recommendation 12. One of them is, when we do a notice of proposed amendment to an environmental authority, we have to consider submissions on that. If you consider a holder's comments and suggestions, if you want to make amendments to the condition that was proposed, you have to go all the way back to the beginning again so it is quite an inefficient process in terms of finalising that and being able to take into account the feedback from the licence holder. This will clarify that you do not need to start the process again, you can just consider and finalise those amendments. That still, obviously, provides natural justice in the process and only uses the existing powers that are already available under the act to do that.

The other clarification that partially goes towards recommendation 12 is that for an environmental enforcement order, which is the new combined compliance notice, having an environmental authority with conditions attached to it does not preclude us from being able to issue a compliance notice. I will give you an example of that. You may have an environmental authority for a waste facility, for example, that permits waste stockpiles but it may not have anything around fire management and how to manage fire risks associated with that—we have had this recent example actually so it is kind of a live one. The bill will ensure that it does not preclude us from being able to take action. We would be able to issue a notice, for example, to that waste facility to require them, if there is a fire, to take action to put the fire out, review their management measures in place to manage that stockpile in the future and reduce fire risks and to clean up any associated fire water or run-off associated with that. It is really a clarification to say just because you have an environmental authority does not mean that if you are causing environmental harm that that harm is automatically authorised. We still have compliance powers.

Mr O'CONNOR: There are parts of recommendation 12 that you are saying are implemented, but in the nearly 12 months since the government announced its response to this review there has not been a way to figure out how to implement it in full?

Ms Andersen: That would take a much broader consideration around the broader framework for our licensing system and how we would consider being able to keep licences more contemporary in the future. In terms of the government response to the independent review, it made it clear that that would require further regulatory impact assessment and quite significant stakeholder consultation. That was not undertaken as part of this process, but the bill addresses the majority of the other recommendations.

Mr O'CONNOR: Pivoting to stakeholder consultation, one of the biggest issues that came up from stakeholders in the last EPOLA bill that we had was the process around consultation where NDAs were required to be signed by some stakeholders and they were not even able to discuss what was in that bill with their members. Has that been improved this time around? Can you run us through a bit of the stakeholder feedback?

Ms Andersen: I will elaborate a little and ask Theo to follow up as well in terms of the process there. There was an eight-week consultation process where a consultation paper outlined the proposed amendments that would end up in the bill. There were a range of stakeholder information sessions that were run as part of that, to outline the key amendments and the intent of those and answer any questions. There was an opportunity for stakeholders to respond and make submissions

on that consultation paper. We have also published a summary of how that consultation and feedback has been addressed and considered in the final bill. That is publicly available to make sure that we have a good feedback process to those stakeholders that took the time to provide some feedback on it.

In terms of the last EPOLA bill, for this process there was no requirement around confidentiality or anything like that. It was a public consultation process.

CHAIR: Ms Andersen, to the observer on the street looking at this bill, would you summarise it as giving the department more rigour around penalties and powers for environmental harm?

Ms Andersen: I think the intent of the original Jones and Hedge review was really to have a deeper look at what the powers and penalties are like in the current legislation that we have before us, how does that compare to other jurisdictions—

CHAIR: I was going to ask that.

Ms Andersen:—and how does it particularly deal with nuisance issues. This was very much driven out of a significant number of community concerns, particularly in South-East Queensland and the Ipswich area, around nuisance and odour issues in particular. The review was very thorough in looking at what the opportunities are to improve the environmental regulation around nuisance. Generally, it found that the powers and penalties that we have are pretty in keeping with other jurisdictions but there are definitely areas for improvement, particularly with respect to nuisance matters.

When you think about the bill before us, it does not introduce new penalties or powers but it does rationalise a number of things to streamline and make that more efficient. I think one of the most important aspects is making it clear that a nuisance matter can be considered material or serious environmental harm, which then opens up a range of other compliance powers and heavier penalties associated with that, particularly with chronic ongoing issues that are really affecting the community. We have had almost 25,000 complaints from the area around Swanbank and the communities there since 2018. That is a chronic ongoing issue that needs a stronger response. This bill will deliver the ability to use those powers and penalties in the future much more effectively.

Mr MARTIN: Could the department elaborate on the duty to restore? It looks to me that it is essentially a way of deterring people from walking away from environmental damage that has occurred. Can you share with the committee how you see the department using that power?

Ms Andersen: A number of provisions in the bill are really about making sure that we are taking a more proactive approach to environmental harm. At the moment, our systems and legislation are probably set up to be more reactive once something happens. Making sure that you have a general environmental duty and offence associated with that and the duty to restore and that primacy of prevention are all about taking more proactive approaches and preventing harm in the first place. I might ask Lawrie to talk a little more about the duty itself.

Mr Wade: The duty has been put in because it would seem that if you cause environmental harm then it would be implied that you would clean it up and restore, but the legislation currently does not specifically say that. It is really bringing into legislation that if you make a mess you clean it up. That is what I tell my kids. Because that has not been expressly put in there, we have now put it in. It is part of not relying on the department to first issue a notice before a person needs to clean up. Currently we could issue a notice to make people clean up, but part of making the legislation more effective is also a more timely response. Part of that is making sure, as the report identifies, that we should be clear about what people's obligations are. It is providing clarity about the obligation and it is taking out a step that the government must first issue a notice before a person is obliged to do something. It is just part of that package of being proactive.

Mr MARTIN: Mr Wade, I like that explanation: if you make a mess you clean it up.

Mr O'CONNOR: Going back to the consultation, in particular I would like a bit more information about the concerns from the aquaculture industry. They had some serious concerns about the last lot of EPOLA legislation. Could you go through their concerns a bit more? I note you mentioned they were worried about the restrictions on the use of sound deterrents. Were there any other things that the aquaculture sector raised with this bill in particular?

Ms Andersen: As you mentioned earlier, the aquaculture industry is particularly interested in recommendation 12 and the associated amendments around that. The fact that the bill has not gone as far as what was recommended, I think, was supported by the aquaculture industry, but obviously they had quite a lot of interest in those particular provisions. Specifically, they talked about the nuisance issues around the bird deterrent stuff. Provided that people are still meeting their general

environmental duty and taking reasonably practicable measures or they have an environmental authority that authorises that activity then it should not affect those activities that are already authorised. This is really about making sure that, if you are doing the right thing and you have authority to do it, then it should not be an impact to those industry members.

Mr O'CONNOR: Their concern was the previous concern about the unilateral changes to an EA from the minister or the DG.

Ms Andersen: I think it is fair to say that we got quite a lot of comments from industry, less about the bill and more about the original recommendation from the reviewers in terms of that recommendation, which this bill does not fully implement.

Mr O'CONNOR: I refer to the definitions with human health, safety and wellbeing. We have seen in the Ipswich situation, with some of their organic waste processes, the difficulty in determining impacts to human health, safety and wellbeing, particularly because that crosses over into public health, which is obviously not your department. Can you run us through a bit more how that will look in practice?

Ms Andersen: Adding health and wellbeing to the principles and the objectives of the act is more about having that recognition that the environment is the important aspect of people's health and wellbeing. The intent of the bill is not to stray into public health activities and roles and responsibilities around that. It is very much about limiting that to the extent that the environment impacts health and wellbeing and nuisance issues, for example. That kind of brings it to the forefront in the objectives of the act. The example that you provided is probably more relevant to the section in the bill that makes it clear that nuisance can be considered environmental harm. If we are looking at a nuisance issue in Ipswich, for example—

Mr O'CONNOR: So it is the smell.

Ms Andersen: It is not about demonstrating that it is having an impact on health; it is demonstrating that it is causing environmental harm and that can be through a number of mechanisms. We have thresholds in the act around what is considered material or serious environmental harm. They are monetary values. It is also clear that it does not just have to be a demonstration of the financial impact. It can also be where something is not—I will have to find the specific words for you.

Mr O'CONNOR: So use it as an easier threshold to reach.

Ms Andersen: Where it is not trivial and it is ongoing. We would be able to demonstrate, for example, that that is not a trivial matter that has impacted a significant number of people in the community. We hear stories from people about not being able to open their doors and windows and not being able to have a barbecue outside. That is not trivial in nature. That is a significant impact to people. We would be looking at how those nuisance matters cause that harm and what type of harm and the extent and context of that in determining whether you could then take stronger action using the existing powers and penalties we have around material and serious environmental harm.

Mr ANDREW: I just looked at some of the information and a lot of states have heavily redacted fees and charges, from page 100. According to the department's written briefing, the bill will impose a duty to restore the environment which requires that—

> ... if a person permits or causes contamination that results in environmental harm they must, as far as reasonably practicable, restore the environment to the condition it was in before the incident occurred.

How does this bill address the environmental harms caused by the renewable energy sector?

CHAIR: That is an interesting question. Are you talking about a specific area that might not have been built?

Mr ANDREW: It is wind farms and the hydro. There is a significant amount of damage where they are going to put through the transmission lines. Now that we are looking at this, I would like to understand how we are going to address renewable energy and the damage, contamination and environmental harm, and what we are going to do about that. How are we going to restore the environment to what this bill requires? Is this being taken into consideration by the bill?

CHAIR: Member for Mirani, your question is going to something that is not built yet. However, I will allow the question and some latitude because it is a bit of a hypothetical as it is not yet built.

Mr ANDREW: Damage is damage. It does not matter where it comes from. It is the same as when you are building transmission lines and digging. It is not hypothetical. It is a reality. There is damage there already.

CHAIR: As I said, member, I will allow some latitude in the response from the department.

Mr ANDREW: Thank you, Chair. I appreciate it.

Ms Andersen: Firstly, I might clarify that the duty to restore is around any incidents involving contamination of the environment and that results in environmental harm. An example might be a chemical spill into a waterway or paint into an area. The intent is that the duty is that if you were the person responsible for that contamination incident then you should clean it up. We still have the ability to issue a clean-up notice as well to somebody to clarify any of the requirements around that.

When it comes to assessing and implementing compliance around particular activities like renewable energy, a range of other frameworks come into play around that. If you think about wind farms, that will be assessed and determined under a state code for wind farms, delivered by the Department of State Development and Infrastructure. That will have included in it consideration around rehabilitation and restoration. That will be separate to this duty to restore so some of the rehabilitation requirements from State Development are set out separately in legislation. It is the same thing for resource projects. There is a requirement around land rehabilitation after those activities are completed and similarly for any other activities that we regulate. Rehabilitation would occur through those kind of licensing frameworks. This duty is really about contamination incidents.

Mr ANDREW: The reason I asked the question is that these people pay offsets to do whatever they do in the environment. Take, for example, the proposed solar factory at Smoky Creek. It is situated right at the head of the major waterway that flows into the Fitzroy River in Rocky's area and their water supply and the Great Barrier Reef World Heritage conservation area. How will the bill deal with an environmental harm caused by these types of projects, hundreds of which are already underway all over Central Queensland and all of which are currently exempt from Queensland environmental laws that were seen through paid offsets? Are they going to be looked at the same as the requirements imposed on the agricultural, mining and resource sectors or do they get a different classification as far as their environmental damage and environmental responsibilities are concerned?

CHAIR: Again, I will allow some latitude in the response.

Ms Andersen: I acknowledge the concerns around potential impacts from some of those renewables and that there is definitely a process that needs to be considered around understanding the impacts of some of those renewable energy projects, whether it is solar activities, wind farms or pumped hydro. Obviously as part of the fairly significant economic transition that the state is going through there is a significant increase in some of those activities at the moment. They are not directly regulated under the Environmental Protection Act. For example, wind farms and solar activities are regulated through the Planning Act and obviously there is quite a fair bit of reform in that space underway at the moment through the renewable energy work that the Department of Energy and Climate is undertaking. I would say that the requirements around offsets are built into those processes and the need to consider how projects are avoiding and mitigating impacts on the environment before they get to offsets is an important factor, and that is certainly something that the department is impressing upon any applicants that are coming to us for advice and the technical advice that we are providing to other agencies as well around those projects.

Mr CRAWFORD: Referring again to duty to restore—this seems to be a bit of a theme; we all seem to be on this one given that it is quite interesting and I think one that the public is very interested in—are there any circumstances where there is an exemption to duty to restore, whether it is levels of government, organisations, certain people? The brief that I have refers to the person quite a bit. I am assuming that the duty extends to corporations, but I just want that clarified.

Ms Andersen: Maybe to answer that last bit first, yes, it is attached to a person but it can also be a corporation as well, so there are different penalties associated with that and there are different penalties about whether it is a wilful or not a wilful offence associated with that. The intent of the duty to restore is really to try and make it clear that people should not be waiting for the regulator to issue a clean-up notice but that you have a duty to, as soon as you are aware of a contamination incident, commence that duty to restore and clean up.

Mr CRAWFORD: Just in relation to the third-party land, an example might be where there is, say, soil contamination on one block of land that has gone down into the soil and extended into the neighbouring block of land which may be privately owned and could be someone else's tenure in terms of the extent of the powers and permissions and everything like that, assuming that now we have to dig up someone else's land which may affect footings to buildings and those sorts of things. I am interested in whether there has been any thought about those.

Mr Wade: Yes, there has been thought to that and the provisions are similar to the ones for the existing clean-up notice where there is an ability to enter other people's land but it requires either agreement or giving of notice to ensure those things can occur, so it requires engagement with the landholder.

Mr CRAWFORD: If that neighbouring landholder refused permission, would you then have the power to then order a clean-up on their land, assuming that they have contamination?

Mr Wade: There is an ability to do that. I would have to go to the precise words of the bill to further detail that, but there is an ability to go on to another person's land but it requires the giving of notice and in giving a notice to clean up in the first place or that requirement would also be taken into account.

CHAIR: Following on from the member for Barron River, with regard to your proactive approach which you have talked about and not in the reactive sense, will the changes in this bill affect the privately owned area? I am going to go to North Queensland as an example. There has been plenty in the media around a certain tailings dam from an old QNI nickel mine. Whenever we have major floods, people are concerned. How do you proactively go out and manage that risk on a privately owned facility that is no longer being used for its intended purpose? How do you do your monitoring and regulate that circumstance?

Ms Andersen: I think the other thing to recognise is that this duty to restore complements some of the broader contaminated land provisions that we have in Queensland, so if you do have a contaminated site that needs to go on either the Contaminated Land Register or the Environmental Management Register people are aware of what that process is and there are requirements around taking actions to remediate that land at the same time. The duty to restore complements that broader contaminated land framework that we have in place in Queensland as well that is generally going to be the main framework where we are driving remediation of contaminated land. Other examples might be where we have contamination from a licensed facility, so it might be something that is an environmentally relevant activity, whether that is mining or refineries or a waste facility. Again, they may have conditions around how they manage that contamination or any releases associated with it, so the duty to restore complements some of those other tools that we have available and we still retain that ability to issue a specific clean-up notice that can be quite specific around what steps need to be taken by that landowner or the licence holder to address those issues. It really just provides that extra principle that we are trying to push people into more proactive approaches.

CHAIR: The second part of the question was from the penalties approach. You gave an example before of a paint spill versus significant environmental harm. Are the penalties scalable to what is considered small, moderate or extreme, and what are those penalties?

Ms Andersen: That is a good question. The fact that a nuisance can be considered harm is probably where you see the biggest ability to scale those penalties depending on the level of harm. Obviously any penalty that is applied is at the discretion of the court on an outcome of a prosecution. However, for the purpose of the legislation, I will give you a couple of examples. Where an environmental nuisance is issued currently, the penalty for a wilful offence associated with nuisance is around $250,000 for an individual or $1.2 million for a corporation. When you step up to material environmental harm, for wilful activities it is $690,000 for an individual and $3.4 million for a corporation or two years imprisonment, so you do kind of step into those indictable offences. For serious environmental harm, it increases again to $960,000 for an individual and $4.8 million for a corporation or five years imprisonment. We have gone from quite small offence provisions for nuisance and we will often issue, for example, a penalty infringement notice which is in the order of $13,000 to $15,000 currently up to a much heavier penalty associated with that material or serious environmental harm. Obviously you would have to ground a prosecution in demonstrating that that harm has occurred, but it definitely provides much stronger penalties for that harm.

CHAIR: Thank you very much.

Mr O'CONNOR: Just on the general environmental duties, if you are charged with breaching that does that overrule other offences under the EP Act or does it compound on top of other offences? I know it is kind of hard based on the situation, but is it intended to cover a bunch of other offences that someone may have committed or is it a cover all?

Mr Wade: No, it is a standalone. Is the question which you might be alluding to there: is the possibility of being charged with not complying with the general environmental duty and for causing environmental harm?

Mr O'CONNOR: Yes.

Mr Wade: There is a specific provision we have put into the bill to protect a person from being charged for two things if it was substantially the same offence.

Mr O'CONNOR: Does it then revert to the more significant of the offences? How is it decided which one they get charged with?

Mr Wade: That would be in accordance with prosecution guidelines, not within the bill. I think it is the general environmental duty offence, and general environmental duty has been there since the bill was passed in 1994, so it is not new and we have been able to enforce it through an environmental protection order to date, so it has been enforceable. This takes out that step to try and encourage more proactive work. You will see in the bill also there is a number of paragraphs specifying the things to be considered when you are considering whether a person has complied with their general environmental duty, and they will be things like are systems in place, has training been done and those types of things. We have tried to provide certainty for everybody who is affected by it about the sorts of things they need to do and the proactive component is try and have that happen so we do not have to go out and clean up the spill, and for business it is expensive to go and clean up as well. The things that we prevent are better than the things we have to respond to, so, in short, yes, we have provisions in there to prevent it being a couple of offences piled one on top of the other.

Mr O'CONNOR: This is just trying to make it more proactive so it does not get to that point?

Mr Wade: Yes.

Ms Andersen: I might just add that the bill talks about circumstances where a person will be taken not to have committed a general environmental duty offence and one of the ones that is quite relevant is if you have an environmental authority that authorises that harm effectively and sets out the reasonably practicable measures that would be expected to manage and minimise that harm.

Mr O'CONNOR: And as long as you can show you have complied with the EA—

Ms Andersen: As long as you have an EA and you have conditions that are kind of relevant to that matter. You will still have a general environmental duty, even if your EA does not specify every single circumstance, but if an EA holder can demonstrate that they were following their conditions and taking reasonably practicable measures it would be clear that that would not apply. The other option people have is a code of practice. We have a provision under the act for codes of practice which specify how you meet your general environmental duty and if you have complied with that code of practice then you would not be charged with a GED offence.

Mr O'CONNOR: Finally, while we have you here something that is relevant to the application of these laws would be the creation of an independent EPA. Do you have any update on the progress of that? I think it was committed to late last term and there was quite a lengthy consultation period and we have not really heard much since, so as the regulator do you have any comment on the progress of implementing an independent EPA?

Ms Andersen: I would say that that is probably a matter for our minister to answer in terms of that process. I understand that consultation process has been completed around what the options might be for an independent EPA. There has not yet been a decision on that and the matter is currently with the government.

Mr O'CONNOR: Thank you.

Mr ANDREW: The explanatory notes state that one of the aims of the bill is to facilitate a more proactive approach to environmental harms and to increase regulatory responses to manage environmental harm that has occurred. What regularly impact assessments or statements have been done on the bill's impact on farmers, miners, commercial fishers and other sectors such as the aquaculture industry which will be the primary targets of this bill? Has any RIS been done on any of these areas?

Ms Andersen: I might refer to my colleague Theo, who has been involved in the consultation process.

Mr Verrills: In terms of a regulatory impact assessment, an assessment of the proposal was undertaken. The Office of Best Practice Regulation was notified as per the Queensland government better regulation policy. The regulation proposals were assessed as either minor or machinery or having no significant impacts. Therefore, a summary impact assessment statement was prepared and approved by the director-general of the department and the minister. That summary IAS has been published and is publicly available on the department's website.

Mr ANDREW: So there has been a regulatory impact statement done on each of those areas regarding these increases and how it will affect people in a cost-of-living crisis in terms of what is going on with interest rates and everything else? You have assessed all of that prior to the increases?

CHAIR: That is a loaded question with lots of components to it.

Mr ANDREW: In terms of what is happening in the world today and in Queensland and Australia with the cost of living and increases in costs of production, we have taken all of this into consideration?

Ms Andersen: Yes. An impact assessment has been done in terms of the regulatory impact of this bill. Generally speaking, the bill is set up in a way that, provided you are doing the right thing and you are not polluting the environment and you do not have anything to clean up, there should not be significant costs to our existing licence holders or farmers who are regulated by the reef regulations or to aquaculture facilities and some of the other industries that you mentioned. Part of this is just making sure that we are holding people to account for environmental harm that does occur. Provided you are doing the right thing, there should not be an impact.

Mr ANDREW: The renewables sector do get a specific mention in this bill. Has this all been catered for with the renewables sector as well or is it just a broad overview of environmental damage?

Ms Andersen: The general environmental duty, for example, applies to everybody in Queensland—that applies to every industry and individual. It is a bit like your workplace health and safety duty. We all have a proactive duty to take reasonably practicable measures to make sure we have safe work environments. That duty around protecting and minimising environmental harm is on everybody including various industries, some of which we directly regulate and some of which we do not.

Mr ANDREW: To justify my question, we have never been able to see a document between the renewables sector and the government. It is all commercial-in-confidence. That is why I am asking questions about that situation. We do not know how these paid offsets actually circumvent—if they do indeed circumvent—the process of these types of environmental protection laws. We cannot see it. That is why I am asking these questions. Do you have any information on how offsets are paid? Can that circumvent any of these processes to make them non-liable or legally sectioned away from these laws? Can you confirm that everyone is under the same laws—that there is no free pass or free kick to not be under these laws?

CHAIR: That preamble is extremely lengthy. It is stepping away from the intent of the bill. I will allow a little bit of latitude if you want to respond to that. Otherwise we will take it mainly as a comment.

Ms Andersen: I can clarify that the general environmental duty would apply to everybody. That would include anybody undertaking renewable activities. The arrangements around offsets are not covered within this bill. That is a standard approach that we see across a range of developments—the intent being that we want to see people demonstrate that they have avoided environmental impacts, mitigated them or minimised them to the extent that they can and that, for any significant residual impact, there is an appropriate offset associated with that so that you are restoring vegetation or habitat that has been lost as a result of that activity. That is the same across mining, waste activities and power generation. Renewables is the same around offsets. That also intersects between both the state and the Commonwealth, so a number of those offsets will be required by the Commonwealth, not by the state, as they relate to matters of national environmental significance.

CHAIR: There being no further questions, thank you very much for your attendance today. It has been very informative for the committee. I declare this public briefing closed.

The committee adjourned at 12.20 pm.